

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4730 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUNSHI B PRANLAL

Versus

STATE OF GUJARAT

Appearance:

MR MC BHATT for Petitioner

SMT SIDDHI TALATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/97

ORAL JUDGEMENT

#. This petition has been filed by the petitioner who was at the relevant time holding the post of 2nd Extra Assistant Judge, Ahmedabd (Rural) at Narol and prayed for direction to the State of Gujarat to grant him one more increment in the higher pay scale since the date of his promotion as Assistant Judge i.e. from 14th June, 1980, and to confer all other consequential and incidental

benefits and further increments accordingly and to direct the State of Gujarat to pay arrears of difference and further to confer the same benefits on all the Assistant Judges in the Senior Judicial Service of the State.

#. The facts of the case, in brief, are that the petitioner was appointed as Civil Judge (J.D.) and Judicial Magistrate, First Class, vide notification dated 20th July, 1967 of the Government. On 19th November, 1977, he was posted as Chief Judicial Magistrate at Palanpur, Banaskantha District. Thereafter, the petitioner has served as Metropolitan Magistrate in the City of Ahmedabad from October, 1978 to June, 1980. He was promoted as Assistant Judge vide notification dated 21st May, 1980 and promoted in the cadre of Class-I Senior Branch and he was posted at Valsad at Navsari where he joined on 14th June, 1980.

#. The Gujarat Judicial Recruitment (Amendment) Rules, 1979 provide for Recruitment and other service conditions in respect of Gujarat Judicial Service. The said rules provide for two branches of the Judicial Services which are (i) Junior Branch and (ii) Senior Branch. In the present case we are concerned with the Senior Branch. The Rules aforesaid provide that the Senior Branch shall consist of District Judges, Principal Judges and Judges of Ahmedabad City Civil Court, the Chief Judge of the Small Causes Court, Ahmedabad, the Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate, Ahmedabad and Assistant Judges. Sub-rule (4) of the Rule 6 provides for making appointment to the post of Assistant Judge. As per this rule, the Assistant Judge shall be appointed by the Governor in consultation with this Court and it can be made by promotion of persons holding the post of Civil Judge (J.D.) or from the cadre of Civil Judge (S.D.) subject to certain other conditions in respect of entry of the names in the select list. For promotion from the cadre of Civil Judge (S.D.), the minimum experience of three years on civil side is prescribed and for Civil Judge (J.D.), the minimum experience of seven years on civil side is requisite experience for promotion. That Rule also provides for appointment of Assistant Judges by direct selection. Article 236(a) of the Constitution of India, in terms provides that the expression "District Judge" includes Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. So, as per the petitioner's case, the

"Assistant Judge" is included in the expression of District Judge. Article 234 of the Constitution of India provides for recruitment of persons other than District Judges to the judicial services and the cadre of the District Judges and other Judges is separately treated in the Constitution of India and even in the Rule aforesaid also the said cadres are separately treated. It is further say of the petitioner that the duties and functions, as far as judicial work is concerned, are practically the same as that of District Judge, Joint District Judge and Assistant Judge in the District Courts. The District Judge has to discharge certain additional functions of administrative nature which is not the duty of other Judges. So far as the duties in the judicial work are concerned, the same are almost identical except in the cases of matters arising for claiming compensation under the Motor Vehicles Act. The petitioner has given in para-10 of the Special Civil Applications, the functions and judicial duties of Assistant Judge. In para-11 of the Special Civil Application, the petitioner has made a statement that the judicial duties and functions of Assistant Judges are distinct and much higher in nature than judicial duties and functions which are discharged by the cadre of junior branch of judicial services. The appellate jurisdiction is not conferred on the judicial officers working in junior branch of judicial services and the powers exercised by them in criminal and civil matters are of lessor importance and involve lesser responsibilities than the powers exercised and duties discharged by Assistant Judges. The post of Assistant Judge is otherwise treated as promotional post. The difficulty has arisen when under the revised pay scale Rules of 1975, the pay scale for the post of Civil Judge and Assistant Judge was made identical and as the pay scales were identical for both cadres, it has been presumed that for the purpose of pay fixation on promotional post, there are no greater responsibilities discharged by the holder of this post and hence pay of the petitioner had to be fixed under Rule 41(A)(i) and not under Rule 41(A)(ii) of the Bombay Civil Services Rules.

#. From the reply which has been filed by this Court (Administration side), it transpires that it had, in fact and substance, accepted that the post of Assistant Judge is certainly a post of higher responsibility, but in view of the Government Resolution dated 20th September, 1979, reference of which has been made in the reply, the grievance of the petitioner was not accepted. The resolution of the Government dated 20th September, 1979, reads as under:

"On account of revision of pay scales under the Gujarat Civil Services (Revision of Pay) Rules 1975 in pursuance of the recommendations of the Second Pay Commission, it has happened that posts carrying different, pay scales have been brought on identical pay scales, while posts carrying identical pay scales have been attached different pay scales. Consequently the old identities or hierarchies have yielded to the new relativities with effect from 1st January, 1973.

2. A point had been raised as to how such cases could be regularised in consequence of the introduction of the Gujarat Civil Services (Revision of Pay) Rules, 1975 with retrospective effect from 1st January, 1973. This has been examined and it has been decided that person who have opted for the revised scales should, on appointment from one post to another post carrying identical scale be treated as transferred to another post and not promoted.

2. The various Departments of the Sachivalaya are requested to take immediate steps to make suitable modifications to the existing Recruitment Rules to conform to the new relationship created by the pay scales prescribed under the G.C.S. (ROP) Rules, 1975, such amendments would be prospective."

#. Rule 56 of the Bombay Civil Services Rules provides that for the purposes of this rule, the officiating appointment shall not be deemed to involve the assumption of duties or responsibilities of greater importance if the post to which it is made, is on the same scale of pay as the permanent post, other than a tenure post, on which he holds a lien or would hold a lien had his lien not been suspended under Rule 19, or on a scale of pay identical therewith. From the pleadings of the parties, it further transpires that this Court, on its administrative side, is also of the view that injustice has been done to this class of persons and appears to have recommended the Government for the benefit claimed by petitioner but the Government has not accepted the same. During the course of argument, the learned counsel for respondent State Government, on being asked by this Court, stated that the question of exemption to rigor of the Rules in the case of Assistant Judge, during the relevant time has not been considered by the Government. From 1.1.86, there is no anomaly now, but for the period

earlier to 1.1.86 when the pay scales of both the posts of Civil Judge and Assistant Judge was same, this position has arisen. The learned counsel for respondent-State does not dispute that the Government has powers to relax any Rule where anomaly has been created or where it has any harsh effect upon the employees, but in the case of judicial officers, this exercise has not been undertaken. In the Affidavit-in-Reply of the Under Secretary to the Government of Gujarat, Finance Department, it has been stated that in case pay fixation is done under Rule 41(A) of the Bombay Civil Services Rules retrospectively in the case of petitioner, it may have a far reaching effect in other similarly situated cases. I fail to see any justification in this defence. It is not disputed by either of the respondents, as stated earlier, that on promotion or what it may be now called 'posting' of the officer concerned, as Assistant Judge, it will be a case of posting on the post involving assumption of extra duties or responsibilities of greater importance than those discharged by the Civil Judge. In such case, though technically speaking, or in view of the Government Resolution aforesaid, Rule 41(A) may not be applicable, but still I am of the considered opinion that the Government should have considered the question of grant of exemption to such class of officers fairly and reasonably. In the present case, the Government has also acted technically and it has not considered objectively the question of grant of exemption to the Assistant Judges who have been promoted or posted on these posts during the period in dispute. Once substance of the matter is accepted that on posting of the officer as Assistant Judge, he has to discharge higher responsibilities or duties which are of greater importance, it would have been a fit case where the Government would have considered objectively the matter of grant of exemption to this class of persons of rigor of the rules. However, this exercise has not been undertaken by the respondent-State. Moreover, the contention that merely because in case the petitioner is given benefit it may have a far reaching effect in other similarly situated cases is hardly of any substance and relevance. The petitioner, in fact, filed this petition in a representative capacity and the matter of grant of exemption in respect of all those officers including the petitioner, who have been posted as Assistant Judges during that period, or the persons who are similarly situated, has to be considered. I fail to see what far reaching effect will be there. I have been told that this class of persons are hardly 15 to 20 in number. It is only a case where these persons may get some benefit of one grade increment, i.e. some financial benefit and

in case the officers who really deserve such benefits are given the same, it will not have any far reaching effect more so when the Government is not more particular of things prevailing in the country which are having far reaching effects. If an officer gets some more amount of salary, how it can be said to be a matter of having far reaching effect. This attitude of the Finance Department is wholly perverse. The judicial officers should get some monetary benefits not only as a grace or ex-gratia but because of their posting as Assistant Judges, which involves assumption of higher duties and responsibilities of greater importance than that of Civil Judges.

#. Interest of justice will be met in case this Special Civil Application is disposed of with directions to the respondent-State to consider objectively the claim of petitioner and other similarly situated officers posted as Assistant Judges during the relevant time, of grant of one more increment since the date of their posting as Assistant Judge. This exercise has to be undertaken and completed within a period of three months from the date of receipt of copy of writ of this order and where it is decided to grant this benefit to this class of persons, necessary orders for fixation of pay accordingly have to be passed and the arrears of fixation should be determined and the amount found payable should be paid within three months next. Still in case the State Government feels that it is not the case where the these judicial officers should be given one more grade increment on their posting as Assistant Judges at relevant time, a reasoned order may be passed and a copy of the same may be sent to the petitioner. In case of difficulty, liberty to the petitioner of revival of this Special Civil Application. Rule and Special Civil Application stand disposed of accordingly with no order as to costs.

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(sunil/zgs)